

## DISTRICT OF NEVADA

**FEDERAL HOME LOAN  
MORTGAGE CORPORATION'S  
MOTION TO DEEM REQUESTS  
FOR ADMISSIONS ADMITTED**

## Page 1 of 8

1 forth in the Memorandum in Support and affidavit of Marni Rubin Watkins, Esq. attached hereto  
2 and made a part hereof, moves this Court to deem its Requests for Admissions admitted.

3 DATED this 7th day of February, 2012.

FIDELITY NATIONAL LAW GROUP

4 

5  
6 Marni Rubin-Watkins, Esq.  
7 Nevada Bar No. 9674  
8 2450 St. Rose Pkwy., Ste. 150  
9 Henderson, Nevada 89074  
10 Attorneys for Federal Home Loan Mortgage  
11 Corporation

12 **AFFIDAVIT OF MARNI RUBIN WATKINS, ESQ. PURSUANT TO LOCAL RULE 26-7**

13 STATE OF NEVADA )  
14 ) ss:  
15 COUNTY OF CLARK )

16 MARNI RUBIN WATKINS, being duly sworn, deposes and says

17 1. That I am a duly licensed attorney in the State of Nevada, and counsel for Federal Home  
18 Loan Mortgage Corporation ("FHLMC") in the above-captioned matter.

19 2. FHLMC sent Plaintiff FHLMC's First Set of Requests for Admissions, First Set of  
20 Interrogatories and First Set of Requests for Production on November 18, 2011.

21 3. On December 1, 2011, FHLMC sent Plaintiff their Second Set of Requests for Production  
22 and Second Set of Interrogatories.

23 4. On November 12, 2012, FHLMC noticed Plaintiff's deposition for January 5, 2012,  
24 expecting to have received Plaintiff's responses to FHLMC's discovery by that date.

25 5. On or about December 14, 2011, Plaintiff's counsel contacted me and asked for an  
26 extension to respond to FHLMC's discovery requests. I responded that I would grant an  
27 extension but would need to move Plaintiff's deposition and wanted the responses prior to  
28 deposing Plaintiff. Plaintiff's counsel and I agreed to an extension until January 3, 2012.

6. On January 3, 2012, Plaintiff's counsel contacted me and requested an extension to  
respond to our discovery requests yet again. I granted an extension until January 17, 2012. This

1 conversation was confirmed in a correspondence dated January 3, 2012. **See Exhibit A,**  
2 **Correspondence dated January 3, 2012.**

3 7. Because of the extension on Plaintiff's responses to discovery, I moved Plaintiff's  
4 deposition to January 31, 2012. **See Exhibit B, Amended Notice of Deposition.**

5 8. On January 13, 2012, Ashley from Plaintiff's counsel's office contacted my paralegal,  
6 Jennifer O'Brien, and asked for an additional extension to respond to our discovery requests. We  
7 agreed to an extension until January 23, 2012. This was confirmed in an email. **See Exhibit C,**  
8 **Email dated January 13, 2012.**

9 9. During the January 13, 2012 phone call, my paralegal, with me standing next to her, made  
10 it clear that this would be the last extension as we need to move forward with discovery and  
11 Plaintiff's deposition.

12 10. The morning of January 24, 2012, I checked my voicemail and heard a message from  
13 Plaintiff's counsel that was left after I had left the office on January 23, 2012, stating that she  
14 cannot get me the responses and assumes that an additional extension is acceptable.

15 11. Upon receiving Plaintiff's counsel's voicemail message, I called Plaintiff's counsel's  
16 office and asked to speak with Elizabeth Ashley. I was told she was unavailable and to leave a  
17 message. I did so and followed up this message with a correspondence stating that an extension  
18 was not acceptable and that she should email me her responses that day. **See Exhibit D, Email**  
19 **dated January 24, 2012.**

20 12. I never received a response.

21 13. On January 31, 2012, I called the Ashley Law Group a second time and asked to speak  
22 with Elizabeth Ashley. I was told that she was unavailable and to leave a message.

23 14. I left a message asking her to call me back pursuant to Local Rule 26-7 regarding her  
24 responses to FHLMC's discovery.

25 15. This message was followed-up by a correspondence requesting responses on or before  
26 Friday February 2, 2012 and stating that the Requests for Admissions are deemed admitted and  
27 all objections are waived. **See Exhibit E, Correspondence dated January 31, 2012.**

28 16. On February 2, 2012, I received an email from the Ashley Law Group attaching the


1 discovery responses including their late responses to FHLMC's Requests for Admissions. There  
2 was no explanation or apology. **See Exhibit F, February 2, 2012 email.**

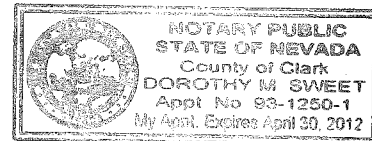
3 17. Plaintiff's failure to timely respond to FHLMC's requests for admissions has mandated  
4 Court intervention in order to proceed.

5  
6 FURTHER YOUR AFFIANT SAYETH NAUGHT.

7  
8   
MARNI RUBIN WATKINS, ESQ.

9 SUBSCRIBED AND SWORN to before me  
10 This 7th day of February, 2012.

11   
12 NOTARY PUBLIC in and for said State and County.



13  
14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15  
16 **I. INTRODUCTION AND FACTS**

17 On November 18, 2011, counsel for FHLMC, served Plaintiff's counsel with Defendant's  
18 First Set of Requests for Admissions, attached hereto as **Exhibit G**, First Set of Interrogatories,  
19 attached hereto as **Exhibit H**, First Set of Requests for Production, attached hereto as **Exhibit I**.

20 The following Requests for Admissions were set forth therein:

21 **REQUEST NO. 1**

22 Admit that Carmen Esposito was responsible for your household finances prior to his  
23 passing in May of 2007.

24 **REQUEST NO. 2**

25 Admit that Marie Heilberg is your daughter.

26 **REQUEST NO. 3**

27 Admit that you never had any communications with anyone from Federal Home Loan  
28 Mortgage Corporation/Freddie Mac.

1 **REQUEST NO. 4**

2 Admit that any communications that you had regarding the subject loan was by and  
3 between your attorney and Federal Home Loan Mortgage Corporation's attorney.

4 **REQUEST NO. 5**

5 Admit you deferred all of the household finances and business dealings to your husband  
6 while he was alive.

7 **REQUEST NO. 6**

8 Admit you deferred all of the household finances and business dealings to your daughter  
9 Marie Heilberg after your husband passed away.

10 **REQUEST NO. 7**

11 Admit that you authorized Marie Heilberg to act as your agent regarding all household  
12 finances.

13 **REQUEST NO. 8**

14 Admit that you knew Marie Heilberg was making payments on the Taylor Bean &  
15 Whitaker loan for approximately one year.

16 Plaintiff's responses to the discovery requests, including the Requests for Admissions  
17 were due on December 18, 2011.

18 On December 1, 2011, FHLMC sent Plaintiff their Second Set of Requests for Production  
19 and Second Set of Interrogatories. On November 12, 2012, FHLMC noticed Plaintiff's  
20 deposition for January 5, 2012, expecting to have received Plaintiff's responses to FHLMC's  
21 discovery by that date.

22 On or about December 14, 2011, Plaintiff's counsel contacted counsel for FHLMC and  
23 asked for an extension to respond to FHLMC's discovery requests. Counsel for FHLMC agreed  
24 to grant this extension but explained to Plaintiff's counsel that Plaintiff's deposition would need  
25 to be moved as receipt of these discovery responses is necessary prior to proceeding with  
26 Plaintiff's deposition. An extension until January 3, 2012, was agreed upon by both parties.

27 On January 3, 2012, Plaintiff's counsel contacted counsel for FHLMC yet again and  
28 requested an additional extension to respond to FHLMC's discovery requests. The extension

1 was reluctantly granted until January 17, 2012. This conversation was confirmed in a  
2 correspondence dated January 3, 2012. **See Exhibit A, Correspondence dated January 3,**  
3 **2012.** Because of the extension on Plaintiff's responses to discovery, Plaintiff's deposition was  
4 moved to January 31, 2012. **See Exhibit B, Amended Notice of Deposition.**

5 On January 13, 2012, Ashley from Plaintiff's counsel's office contacted Jennifer O'Brien,  
6 the paralegal at defense counsel's office and asked for an additional extension to respond to  
7 FHLMC's discovery requests. FHLMC's counsel agreed to an extension until January 23, 2012.  
8 This was confirmed in an email. **See Exhibit C, Email dated January 13, 2012.** During the  
9 January 13, 2012 phone call Jennifer O'Brien made it clear to Plaintiff's counsel that this would  
10 be the last extension as we need to move forward with discovery and Plaintiff's deposition.

11 On the morning of January 24, 2012, counsel for FHLMC received a voicemail from  
12 Plaintiff's counsel stating that she cannot get me the responses and that she presumes that an  
13 additional extension is acceptable. Upon receiving Plaintiff's counsel's voicemail message,  
14 counsel for FHLMC called Plaintiff's counsel's office and asked to speak with Elizabeth Ashley,  
15 Esq. The secretary at Ms. Ashley's office informed counsel for FHLMC that Ms. Ashley was  
16 unavailable and to leave a message. Defense counsel left a message and followed up this  
17 message with a correspondence stating that an extension was not acceptable and that she should  
18 email me her responses that day. **See Exhibit D, Email dated January 24, 2012.**

19 Plaintiff failed to respond to the First Set of Requests for Admissions, the First Set of  
20 Interrogatories, the First Set of Requests for Production, the Second Set of Interrogatories and the  
21 Second Set of Requests for Production.

22 On January 31, 2012, counsel for FHLMC called the Ashley Law Group a second time  
23 and asked to speak with Elizabeth Ashley, Esq. The secretary at Plaintiff's office informed  
24 defense counsel that Ms. Ashley was not available and to leave a message. Defense counsel left  
25 a message stating that the call was pursuant to Local Rule 26-7 and regarding her responses to  
26 FHLMC's discovery. This message was followed-up by a correspondence requesting responses  
27 on or before Friday February 2, 2012 and stating that the Requests for Admissions are deemed  
28 admitted and all objections are waived. **See Exhibit E, Correspondence dated January 31,**



1 **2012.**

2 As set forth above, Plaintiff has failed to timely respond the FHLMC's Requests for  
3 Admissions. Therefore, as discussed below, the Requests for Admissions should be deemed  
4 admitted. Additionally, Plaintiff has failed to respond to FHLMC's First Set of Interrogatories,  
5 First Set of Requests for Production, Second Set of Interrogatories, and Second Set of Requests  
6 for Production. Therefore, as discussed below, an order compelling Plaintiff's responses should  
7 be issued as well as payment of the attorney's fees and costs incurred in trying to obtain these  
8 responses.

9 **II. LAW AND ARGUMENT**

10 **Plaintiff's Requests for Admissions Should Be Deemed Admitted**

11 Plaintiff's Requests for Admissions should be deemed admitted. Fed. R. Civ. P. 36(a)(3)  
12 provides as follows:

13  
14 A matter is admitted unless, within 30 days after being served, the party to whom  
15 the request is directed serves on the requesting party a written answer or objection  
16 addressed to the matter and signed by the party or its attorney. A shorter or longer  
17 time for responding may be stipulated to under Rule 29 or be ordered by the court.

18 Pursuant to Fed. R. Civ. P. 36(b), the matters are "conclusively established" for purposes  
19 of this action. Fed. R. Civ. P. 36(b). *See also Layton v. International Ass'n of Machinists and*  
20 *Aerospace Workers*, 285 Fed. Appx. 340 (9<sup>th</sup> Cir. 2008) ("There is no dispute that Layton did not  
21 respond on time; the facts were thus admitted without the need for any further action by the court  
22 or the parties."); *Conlon v. United States*, 474 F.3d 616, 621 (9<sup>th</sup> Cir. 2007) ("Unanswered  
23 requests for admissions may be relied on as the basis for granting summary judgment.").

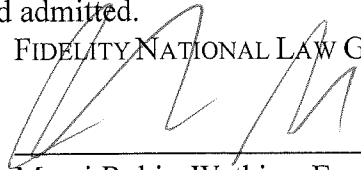
24 The Requests for Admissions were served on November 18, 2011. FHLMC granted  
25 Plaintiff a number of extensions to respond to these Requests for Admissions. The final  
26 extension set the deadline for Plaintiff's responses on January 23, 2012. Plaintiff and/or her  
27 Attorney have failed to respond to FHLMC's First Set of Requests for Admissions. Therefore  
28 the fact that (1) Carmen Esposito was responsible for Plaintiff's household finances prior to his  
passing in May of 2007; (2) Maria Heilberg is Plaintiff's daughter; (3) Plaintiff never had any

1 communications with anyone from Federal Home Loan Mortgage Corporation/Freddie Mac.; (4)  
 2 Any communications Plaintiff had regarding the subject loan was by and between Plaintiff's  
 3 attorney and Federal Home Loan Mortgage Corporation's attorney; (5) Plaintiff deferred all of  
 4 the household finances and business dealing to your husband while he was alive; (6) Plaintiff  
 5 deferred all of the household finances and business dealings to her daughter Maria Heilberg after  
 6 Plaintiff's husband passed away; (7) Plaintiff authorized Maria Heilberg to act as Plaintiff's  
 7 agent regarding all household finances; (8) Plaintiff knew that Maria Heilberg was making  
 8 payments on the Taylor Bean & Whitaker loan for approximately one year should be deemed  
 9 admitted for purposes of this case.

### 10 **III. CONCLUSION**

11 For the foregoing reasons, FHLMC respectfully requests that this Court enter an order  
 12 that FHLMC's Requests for Admissions are deemed admitted.  
 13 DATED this 7th day of February, 2012.

FIDELITY NATIONAL LAW GROUP

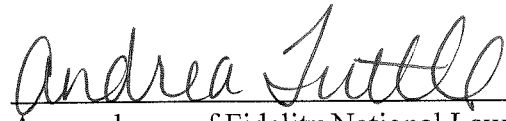
14   
 15 Marni Rubin-Watkins, Esq.  
 16 Nevada Bar No. 9674  
 17 2450 St. Rose Pkwy., Ste. 150  
 18 Henderson, Nevada 89074  
 Attorneys for Federal Home Loan Mortgage  
 Corporation

### 18 **CERTIFICATE OF SERVICE**

19 I hereby certify that I electronically transmitted the foregoing **FEDERAL HOME LOAN**  
 20 **MORTGAGE CORPORATION'S MOTION TO DEEM REQUESTS FOR ADMISSIONS**  
 21 **ADMITTED** to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
 22 Notice of Electronic Filing to all parties listed as CM/ECF registrants, or to the following non-  
 23 registrants by U.S. Mail, on the date below shown.

24 Elizabeth S. Ashley, Esq.  
 25 ASHLEY LAW GROUP, INC.  
 1880 E. Warm Springs Rd., Ste. 130  
 26 Las Vegas, Nevada 89119  
 Attorney for Plaintiff

27 DATED: 27.2012

28   
 An employee of Fidelity National Law Group